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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL ANTHONY CAMERA, Defendant and Appellant.	B264367 (Los Angeles County Super. Ct. No. SA088109)

APPEAL from an order of the Superior Court of Los Angeles County, Kathryn A. Solorzano, Judge. Reversed and remanded.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Michael Anthony Camera appeals from the denial of his petition for resentencing under Proposition 47, the Safe Neighborhoods and Schools Act. In July 2014, Camera stole a piece of luggage from the baggage claim at Los Angeles International Airport (LAX). He was convicted of second degree burglary. In May 2015, Camera petitioned for resentencing on the ground Proposition 47 made his burglary offense a misdemeanor under Penal Code section 459.5,[1] which reduces certain second degree burglaries to misdemeanors when they fit the definition of "shoplifting." The trial court denied the petition on the ground section 459.5 did not apply because LAX is not a "commercial establishment."

We conclude that LAX is a commercial establishment because it is a place of business engaged in the selling of services. We further conclude that Camera's criminal conduct fits within section 459.5 and, therefore, he is eligible for resentencing under Proposition 47. On these grounds, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On July 21, 2014, at approximately 4:30 p.m., Camera entered a terminal at LAX, took a piece of luggage from the carousel, and exited the terminal. He was arrested and charged with second degree commercial burglary (§ 459).[2] He pled no contest and was placed on probation. On May 13, 2015, the court found Camera in violation of probation and imposed the previously suspended sentence of three years.

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[1] All further statutory references are to the Penal Code unless otherwise stated.

[2] He was also charged with battery upon a peace officer (§ 243, subd. (b)) and giving false information to a peace officer (§ 148.9, subd. (a)), but it appears those charges were dismissed.

On November 4, 2014, voters enacted Proposition 47, which reduced to misdemeanors certain possessory drug offenses and thefts of property valued at less than $950. (See *People v. Hall* (2016) 247 Cal.App.4th 1255, 1260.) Proposition 47 also created a resentencing provision, section 1170.18, under which persons currently serving felony sentences for the reclassified offenses could petition for resentencing.

Camera petitioned for resentencing under section 1170.18, seeking reduction of his burglary conviction from a felony to a misdemeanor under the newly-enacted section 459.5. Section 459.5 defines misdemeanor "shoplifting" as "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950)." (§ 459.5, subd. (a).)

The trial court denied the petition on the ground that section 459.5 did not apply because LAX is not a "commercial establishment." Camera timely appealed.

CONTENTIONS

Camera contends the trial court erred in finding his burglary conviction ineligible for resentencing under section 1170.18. Respondent argues that section 459.5 does not apply because (1) Camera's crime does not qualify as a "traditional act of shoplifting," and (2) LAX is not a "commercial establishment."[3]

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[3] The issue of whether section 459.5 is limited to the "common understanding" of shoplifting is pending before the Supreme Court. (See *People v. Gonzales* (2015) 242 Cal.App.4th 35, review granted February 17, 2016, S231171; *People v. Vargas*

DISCUSSION

This appeal turns on the interpretation of section 459.5. The interpretation of a statute is subject to de novo review on appeal. (See *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) In construing a voter initiative, "we apply the same principles that govern statutory construction. [Citation.]" (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) "[W]e begin with the text as the first and best indicator of intent. [Citations.]" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321.) We first look " 'to the language of the statute, giving the words their ordinary meaning.' [Citation.]" (*People v. Rizo*, *supra*, 22 Cal.4th at p. 685.) And we construe the statutory language "in the context of the statute as a whole and the overall statutory scheme. [Citation.]" (*Ibid.*) " 'If the text is ambiguous and supports multiple interpretations, we may then turn to extrinsic sources such as ballot summaries and arguments for insight into the voters' intent. [Citation.]' " (*Kwikset Corp. v. Superior Court*, *supra*, 51 Cal.4th at p. 321.)

Respondent first contends that the voters intended to limit section 459.5 to "traditional acts of 'shoplifting,' " or "the larcenous theft of openly displayed merchandise from a business that sells goods to the public." Respondent argues Camera's criminal conduct does not come within the parameters of section 459.5 because (1) LAX is not a business that "operates primarily by selling goods to the public," and (2) the piece of luggage taken was not "openly displayed merchandise."

(2016) 243 Cal.App.4th 1416, review granted March 30, 2016, S232673.)

Although respondent contends that the voters intended section 459.5 to incorporate the "common understanding" of shoplifting, the voters did not leave "shoplifting" undefined or define it by reference to the "common understanding" of that term. Rather, section 459.5 defines "shoplifting" to mean entry into a commercial establishment during regular business hours with the intent to commit larceny, where the value of the property taken or intended to be taken does not exceed $950.

Respondent urges us to consider the ballot materials to discern voter intent, suggesting that the terms "commercial establishment" and "property" are ambiguous in section 459.5. According to respondent, these terms are ambiguous because " 'commercial establishment' is undefined . . . and it has varying definitions in other contexts," and "the generic meaning of the term 'property' is at odds with . . . the phrase 'money, labor, real or personal property' which appears in section 490.2," another statute added by Proposition 47. We do not find these terms ambiguous merely because they are undefined or are given other definitions in other contexts. (See, e.g., *State of California v. Continental Ins. Co.* (2012) 55 Cal.4th 186, 195 [addressing the interpretation of ambiguities in a contract and holding "[a] term is not ambiguous merely because [the contract] do[es] not define it. [Citations.] Nor is it ambiguous because of . . . ' "the fact that a word or phrase isolated from its context is susceptible of more than one meaning." ' [Citation.]"].)

As respondent has not pointed to any legitimate ambiguity in the statute, " ' " 'the plain meaning of the language governs.' " ' " (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1100.) The plain language of section 459.5 defines "shoplifting" to mean entry into a commercial establishment during regular

business hours with the intent to commit larceny, and we may not revise that definition to accept respondent's view that "shoplifting" includes only the theft of "openly displayed merchandise" from a retail store.

Respondent next argues that LAX is not a "commercial establishment." "Giving the term its commonsense meaning, a commercial establishment is one that is primarily engaged in commerce, that is, the buying and selling of goods or services. That commonsense understanding accords with dictionary definitions and other legal sources. [Citations.]" (*In re J.L.* (2015) 242 Cal.App.4th 1108, 1114 [interpreting section 459.5].) Respondent does not dispute that a commercial airport such as LAX is "primarily engaged in . . . [the] selling of goods or services" as it is operated to provide transportation and related services to consumers. However, respondent argues that the particular area at issue here—the baggage claim—does not qualify as a "commercial establishment," presumably because transportation services typically are not bought and sold there. However, section 459.5 does not state that only certain areas of a commercial establishment qualify under the statute, and we therefore decline to subdivide businesses into areas that qualify or do not qualify under section 459.5.[4]

We agree with the "commonsense" definition of "commercial establishment" set forth in *In re J.L.*, *supra*, 242 Cal.App.4th at

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[4] Respondent also argues that if a defendant enters a room in a commercial establishment "that is neither open to the public nor engaged primarily in the sale of goods or services (such as a manager's office) and intends to commit a theft," such a crime would not fall within the parameters of section 459.5. Because this issue is not before us, we decline to address these facts.

p. 1114, and conclude that LAX falls within that definition because it is primarily engaged in the selling of transportation services. Our conclusion is consistent with the voters' overall intent in passing Proposition 47, which was to "[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop 47, § 3, subd. (3), p. 70.) "Adopting [a] limited definition of 'commercial establishment' w[ould] frustrate [that] purpose[] and result in the continued incarceration of persons who committed petty theft crimes." (*People v. Smith* (2016) 1 Cal.App.5th 266, 274, review granted September 14, 2016, S236112 ["construe[ing] section 459.5, subdivision (a) broadly to include as shoplifting thefts from commercial ventures, such as check cashing stores, which sell services as well as goods and merchandise"].) In summary, as Camera's criminal conduct involved the taking of "property" from a "commercial establishment," and there is no dispute that the other elements of section 459.5 were met here, we conclude his burglary conviction was reducible to a misdemeanor under section 459.5.

Respondent argues that the matter should be remanded to permit respondent an opportunity to withdraw from the plea agreement because the reduction of Camera's felony conviction to a misdemeanor would deprive respondent of the benefit of the bargained-for term.[5] Respondent cites to *People v. Collins* (1978)

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[5] The issue of whether the prosecutor should be permitted to withdraw from a plea agreement when a defendant is found eligible for resentencing under Proposition 47 is pending before the Supreme Court. (See *Harris v. Superior Court* (2015)

21 Cal.3d 208 (*Collins*) for the proposition that when "a subsequent change in the law decriminalizes the conduct to which the defendant pleaded, the People are entitled to restore the dismissed counts."

In *Collins*, the defendant pled guilty to one count of non-forcible oral copulation in exchange for dismissal of fourteen other charges. (*Collins*, *supra*, 21 Cal.3d at p. 211.) The Legislature then repealed the statute defining that crime, decriminalizing the conduct. (*Ibid.*) The defendant appealed and the Supreme Court reversed his conviction. (*Ibid.*) The court further held that because the change in law had "destroy[ed] a fundamental assumption underlying the plea bargain—that defendant would be vulnerable to a term of imprisonment"—the People were entitled to reinstate the dismissed counts. (*Id.* at pp. 215–216.) The court reasoned, "When a defendant gains total relief from his vulnerability to sentence, the state is substantially deprived of the benefits for which it agreed to enter the bargain." (*Id.* at p. 215.)

Unlike in *Collins*, which involved a fully repealed statute defining a crime, here, Proposition 47 reduces crimes from felonies to misdemeanors. In addition, here, Camera has not challenged his conviction but has only petitioned to reduce his sentence. On these grounds, *Collins* does not apply to this case.

The Supreme Court's more recent decision in *Doe v. Harris* (2013) 57 Cal.4th 64 articulated "the general rule . . . that plea agreements are deemed to incorporate the reserve power of the

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242 Cal.App.4th 244, review granted February 24, 2016, S231489; *People v. Perry* (2016) 244 Cal.App.4th 1251, review granted April 27, 2016, S233287.)

state to amend the law or enact additional laws for the public good and in pursuance of public policy." (*Id.* at p. 71.) Accordingly, "requiring the parties' compliance with changes in the law made retroactive to them does not violate the terms of the plea agreement . . . ." (*Id.* at p. 73.) It follows that when a law changes the punishment provided for in a plea agreement, the agreement remains binding. As a result, respondent may not withdraw from the plea agreement and reinstate the dismissed charges against Camera.

DISPOSITION

The trial court's order finding Camera's second degree burglary conviction ineligible for relief under section 1170.18 is reversed and the matter is remanded for further proceedings on his petition for resentencing.

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EDMON, P. J.

We concur:

ALDRICH, J. STRATTON, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.